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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160810719-7041-01]

RIN 0648-BG29

Amendments to the Reef Fish, Spiny Lobster, and Corals and Reef Associated Plants and Invertebrates Fishery Management Plans of Puerto Rico and the U.S. Virgin Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement measures described in Amendment 8 to the Fishery Management Plan (FMP) for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (USVI) (Reef Fish FMP), Amendment 7 to the FMP for the Spiny Lobster Fishery of Puerto Rico and the USVI (Spiny Lobster FMP), and Amendment 6 to the FMP for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the USVI (Coral FMP), as prepared and submitted by the Caribbean Fishery Management Council (Council). This proposed rule refers to these amendments, in combination, as the Accountability Measure (AM)

Timing Amendment. This proposed rule to implement the AM Timing Amendment would modify the date for the implementation of AM-based closures for all species and species groups managed by the Council under the subject FMPs. The purpose of the AM Timing Amendment and this proposed rule is to minimize, to the extent practicable, the adverse socio-economic impacts of AM-based closures, while constraining catch levels to the applicable annual catch limits (ACLs) and preventing overfishing.

DATES: Written comments must be received on or before [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on the proposed rule identified by "NOAA-NMFS-2016-0013" by either of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal:
<http://www.regulations.gov>. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0013, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to María del Mar López, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of the AM Timing Amendment, which includes an environmental assessment, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at http://sero.nmfs.noaa.gov/sustainable_fisheries/caribbean/index.html.

FOR FURTHER INFORMATION CONTACT: María del Mar López, telephone: 727-824-5305; e-mail: *maria.lopez@noaa.gov*.

SUPPLEMENTARY INFORMATION: In the U.S. Caribbean exclusive economic zone (EEZ), the reef fish, spiny lobster, and corals and reef associated plants and invertebrates (corals) fisheries are managed under their respective FMPs. The FMPs were prepared

by the Council and are implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*).

Background

The current AMs in the U.S. Caribbean EEZ for reef fish, spiny lobster, and corals require NMFS to reduce the length of the Federal fishing season in the year following a determination that the landings for a species or species group exceeded the applicable ACL. As specified in the FMPs, the landings determination is based on the applicable 3-year landings average. However, if NMFS determines the ACL for a particular species or species group was exceeded because of enhanced data collection and monitoring efforts, instead of an increase in total catch, NMFS will not reduce the length of the fishing season the following fishing year. The fishing year for Council-managed species in Caribbean Federal waters is the calendar year of January 1 through December 31. If an AM-based closure is required, the closure period currently extends from December 31 backward into the fishing year of the closure (closure year), for the number of days necessary to constrain harvest to the applicable ACL. Fishers in the USVI and Puerto Rico have stated

that implementing AM-based closures at the end of the fishing year results in negative socio-economic impacts, for example, by resulting in multiple and potentially overlapping closures during the important December holiday season. Additionally, fishers in Puerto Rico have stated that timing AM-based closures with a September 30 end date would be expected to reduce adverse socio-economic impacts.

Management Measure Contained in This Proposed Rule

This proposed rule would modify the date for implementation of an AM-based closure in the event of an ACL overage for a species or species group managed by the Council in Puerto Rico, St. Thomas/St. John, and St. Croix under the Reef Fish, Coral, and Spiny Lobster FMPs. Specifically, an AM-based closure would be implemented from September 30 of the closure year backward, toward the beginning of the fishing year, for the number of days necessary to achieve the reduction in landings required to ensure landings do not exceed the applicable ACL. If the length of the required fishing season reduction exceeds the period of January 1 through September 30, any additional fishing season reduction would be applied from October 1 forward, toward the end of the fishing year (December 31). Caribbean fishers have indicated that this approach to implementing AM-based closures

is desirable, because it would be expected to reduce the likelihood that these fishers would lose market access during periods of high demand for fish. Modifying the date for the implementation of AM-based closures through this proposed rule would not change the level of harvest reduction if an AM-based closure were required. This proposed rule to implement the AM Timing Amendment is thus expected to minimize adverse socio-economic effects from the implementation of AMs, while still helping to ensure that AM-based closures constrain harvest to the ACL and prevent overfishing. NMFS notes that the method for calculating the landings determination using the 3-years landings average for a species or species group will not change through this proposed rule.

The FMP for the Queen Conch Resources of Puerto Rico and the USVI is not included in the AM Timing Amendment because queen conch are managed with an in-season closure when the ACL is reached or projected to be reached, rather than a post-season reduction in the fishing year.

Additional Action Contained in the AM Timing Amendment but not Codified Through this Proposed Rule

In addition to the measure discussed above, the AM Timing Amendment requires that the Council revisit the practice of

using September 30 as the end date for AM-based closures no longer than 2 years from the implementation of the AM Timing Amendment and no longer than every 2 years thereafter. Any associated formal review would allow NMFS and the Council to consider changing the implementation date for AM-based closures based on new information, and would be expected to result in additional positive social and economic effects.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMPs, the AM Timing Amendment, the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination follows.

In approving the AM Timing Amendment, the Council

determined that AM-based closures need to be better timed so that they successfully achieve their conservation objective and, to the extent practicable, minimize adverse social and economic impacts to fishers and fishing communities. The purpose of this proposed rule is to change the end date from which AM-based closures are calculated, so that adverse social and economic effects are minimized to the extent practicable, while still ensuring that harvest does not exceed the applicable ACLs required under the Magnuson-Stevens Act and implementing regulations.

This proposed rule, if implemented, would directly affect all entities that commercially harvest federally managed species under the Reef Fish, Coral, and Spiny Lobster FMPs in the U.S. Caribbean EEZ. This proposed rule would be expected to directly affect approximately 1,000-1,200 commercial fishermen in Puerto Rico, 200-250 commercial fishermen in St. Croix, and 70 commercial fishermen in St. Thomas and St. John, resulting in a total of 1,270-1,520 fishermen. The average annual revenue from commercial fishing for 2012-2014 is estimated to be approximately \$7,250-\$8,700 for Puerto Rico fishermen, \$10,500-\$13,100 for St. Croix fishermen, and \$29,600 for St. Thomas and St. John fishermen (2014 dollars). Total average annual revenue

(2014 dollars) for all fishermen for 2012-2014 was approximately \$8.7 million for Puerto Rico, \$2.6 million for St. Croix, and \$2.1 million for St. Thomas and St. John. More recent information is not available.

For Regulatory Flexibility Act purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. All of the commercial fishing businesses directly regulated by this proposed rule are believed to be small entities.

NMFS has not identified any other small entities that would be expected to be directly affected by this proposed rule. Although this proposed rule would also directly affect recreational anglers, recreational anglers are not small entities under the RFA. Changes in angler demand for for-hire services (charter vessels and headboats, as applicable) as a result of this proposed rule could affect for-hire businesses;

however, these changes would be indirect effects of this proposed rule and, therefore, are outside the scope of the RFA.

The AM Timing Amendment contains two actions. The first action would modify the implementation date for any AM-based closure implemented under the subject FMPs, and the second action would require the Council to periodically reconsider its proposed approach. Changing the end date for required AM-based closures to September 30 would be expected to result in unquantifiable economic benefits to the directly affected commercial fishing businesses. An AM-based closure is required in the year following the determination that the ACL is exceeded. The fishing year for Caribbean fisheries is the calendar year of January 1 through December 31, and the current date for determining the AM-based closure period is December 31. If an AM-based closure is required, the closure period extends from December 31 backward into the fishing year until a sufficient number of days are closed to constrain harvest to the applicable ACL and prevent another ACL overage. Fishermen have reported that AM-based closures extending from December 31 backward into the closure year conflict with periods of high consumer demand. Because the end of the year is a period of high consumer demand, AM-based closures during this period result in

reduced revenue and profits to affected fishermen. This proposed rule would change the time period of any necessary AM-based closure. The intent of the closure would be to allow the ACL to be harvested, but not exceeded, regardless of the timing or duration of the AM-based closure. AM closures would be applied from September 30 of the closure year and extend backward into the fishing year, in order to better time the closure and reduce or avoid conflict with economically and socially important seasons. Although the amount of harvest reduction during an AM-based closure would be unaffected by changing the implementation date, avoiding closures during periods of increased demand would be expected to enable fishermen to better meet market demand and maintain product flow, and to receive higher prices and associated profits. Available data are insufficient to document seasonal price variability or to demonstrate the benefits of allowing the possibility of keeping fisheries open, and thus supplying fish during these periods of high demand. Quantitative documentation of demand-driven price increases during the end-of-year and special seasons is not currently available. Additionally, any future ACL overages and associated closures cannot be reasonably predicted. Therefore, it is not feasible to provide quantitative estimates of the potential expected

economic benefits of changing the timing of these closures. Nevertheless, the Council selected the proposed action based on extensive input from fishers and expects that the action would result in increases in revenue and associated profits, even if these predicted increases cannot be quantified.

The second action in the AM Timing Amendment would specify when the Council must revisit and possibly review the practice of using September 30 as the end date for AM-based closures. This is an administrative action because it would establish a procedural requirement as part of the Council's management process. This second action would not be expected to have any direct economic effects on any small entities. Although the review could lead to the Council's subsequent consideration of management changes that may have economic effects on fishing businesses, these would be indirect effects of this action to establish the timing for the Council's review and deliberation, and indirect economic effects are outside the scope of the RFA.

Based on the discussion above, NMFS determines that this proposed rule, if implemented, would not have a significant adverse economic effect on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Accountability measures, Annual catch limits, Caribbean, Fisheries, Fishing.

Dated: February 7, 2017

Alan D. Risenhoover,
Acting Deputy Assistant Administrator for Regulatory
Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.12, revise paragraph (a) introductory text to read as follows:

§ 622.12 Annual catch limits (ACLs) and accountability measures

(AMs) for Caribbean island management areas/Caribbean EEZ.

(a) If landings from a Caribbean island management area, as specified in Appendix E to this part, except for landings of queen conch (see § 622.491(b)), or landings from the Caribbean EEZ for tilefish and aquarium trade species, are estimated by the SRD to have exceeded the applicable ACL, as specified in paragraph (a)(1) of this section for Puerto Rico management area species or species groups, paragraph (a)(2) of this section for St. Croix management area species or species groups, paragraph (a)(3) of this section for St. Thomas/St. John management area species or species groups, or paragraph (a)(4) of this section for the Caribbean EEZ, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the length of the fishing season for the applicable species or species groups that year by the amount necessary to ensure landings do not exceed the applicable ACL. As described in the respective FMPs, for each species or species group in this paragraph, any required fishing season reduction will be applied from September 30 backward, toward the beginning of the fishing year. If the length of the required fishing season reduction exceeds the time period of January 1 through September 30, any additional fishing season

reduction will be applied from October 1 forward, toward the end of the fishing year. If NMFS determines the ACL for a particular species or species group was exceeded because of enhanced data collection and monitoring efforts instead of an increase in total catch of the species or species group, NMFS will not reduce the length of the fishing season for the applicable species or species group the following fishing year. Landings will be evaluated relative to the applicable ACL based on a moving multi-year average of landings, as described in the FMPs. With the exceptions of Caribbean queen conch in the Puerto Rico and St. Thomas/St. John management areas, goliath grouper, Nassau grouper, midnight parrotfish, blue parrotfish, and rainbow parrotfish, ACLs are based on the combined Caribbean EEZ and territorial landings for each management area. The ACLs specified in paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this section are given in round weight.

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